

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RONALD JACKSON,

Plaintiff,
vs.

VONS COMPANIES, INC. *et al.*,

Defendants.

Case No.: 2:23-cv-00711-GMN-NJK

ORDER GRANTING MOTION TO DISMISS

Pending before the Court is a Motion to Dismiss, (ECF No. 78), filed by Defendant

Vons Companies. Plaintiff Ronald Jackson filed a Response, (ECF No. 88). Further pending before the Court is Plaintiff's Motion to Substitute Party, (ECF No. 89), to which Defendant filed a Response, (ECF No. 90). For the reasons discussed below, the Court **GRANTS** the Motion to Dismiss and **DENIES** the Motion to Substitute.

I. BACKGROUND

Plaintiff alleges that he was injured when he went to a Vons grocery store and attempted to sit down on an electric mobility scooter, but the seat slid off and he fell on the floor. (*See generally* Second Am. Compl. (“SAC”), ECF No. 45). His Second Amended Complaint alleges seven causes of action: (1) negligence against all Defendants, (2) negligent hiring, training, supervision, and policies/procedures against all Defendants, (3) res ipsa loquitor against all Defendants, (4) strict products liability, design defect, manufacturing defect, and/or failure to warn against Defendant Amigo, (5) strict products liability, design defect, manufacturing defect, and/or failure to warn against an unknown distributor, (6) breach of implied warranty of fitness against Defendant Amigo, and (7) negligence/failure to warn against Defendant Amigo. (*Id.* ¶¶ 19–95). The Court granted summary judgment for Defendant Vons on claims two and three, so the only remaining cause of action against Vons is claim one

1 for negligence. (*See generally* Order Granting Partial Mot. Summ. J., ECF No. 69). The Court
2 also granted the parties' stipulation for dismissal of Defendant Amigo. (*See generally* Order
3 Granting Stip., ECF No. 78).

4 On November 19, 2024, Plaintiff filed a Suggestion of Death Upon the Record as to
5 Ronald Jackson, (ECF No. 73). The parties filed Joint Status Reports in December and
6 January, (ECF Nos. 74, 77), informing the Court that they were waiting on the substitution of
7 the proper person in place of Mr. Jackson. On February 24, 2025, Vons filed the instant
8 Motion to Dismiss pursuant to Rule 25(a) of the Federal Rules of Civil Procedure because
9 Plaintiff failed to move for substitution within 90 days. (*See generally* Mot. Dismiss, ECF No.
10 78). About a month later, Plaintiff filed a Motion to Extend Time to Oppose the Motion to
11 Dismiss and to file a Motion for Substitution, (ECF No. 84). Plaintiff's counsel represented
12 that they had not communicated with Ms. Jackson, Plaintiff's widow, for five months, because
13 their emails were going to Mr. Jackson's inbox. (Mot. Extend 2:22–3:2). Plaintiff's counsel
14 further asserts that they were unable to leave phone messages, and that Ms. Jackson
15 "erroneously believed" counsel had obtained the necessary documents needed for them to bring
16 a Motion to Substitute. (*Id.* 3:1–10). Counsel included Ms. Jackson's Henderson address in the
17 motion but did not state whether they attempted to visit her residence. (*See id.*).

18 The Court granted the extension as to the time to oppose the Motion to Dismiss but
19 referred the request to extend to the deadline to file a Motion to Substitute to the Magistrate
20 Judge. (Min. Order, ECF No. 86). The Magistrate Judge denied the Motion to Substitute for
21 lack of points and authorities and ordered a renewed motion to be filed by April 2, 2025.
22 (Magistrate Judge Order, ECF No. 87). Plaintiff's counsel filed a renewed motion, asserting
23 that Ms. Jackson was named as the Personal Representative of Mr. Jackson's estate. (Mot.
24 Substitute 2:3–11, ECF No. 89).

1 **II. LEGAL STANDARD**

2 When a party dies during the course of litigation, Federal Rule of Civil Procedure
3 25(a)(1) allows for the replacement of that deceased party with his “successor or
4 representative” if “the claim is not extinguished.” Fed. R. Civ. P. 25(a)(1). If a motion to
5 substitute “is not made within 90 days after service of a statement noting the death, the action
6 by or against the decedent must be dismissed.” *Id.* Thus, to prevail on a motion for substitution
7 under Rule 25(a)(1), the movant must demonstrate that: (1) the motion is timely; (2) the
8 decedent’s claim has not been extinguished; and (3) the proposed person to be substituted is
9 “the proper party.” *Id.*

10 **III. DISCUSSION**

11 Vons moves for dismissal based on the assertion that Plaintiff failed to move for
12 substitution within 90 days as required by Rule 25(a). (*See generally* Mot. Dismiss). The Court
13 agrees. Plaintiff filed the Suggestion of Death on November 11, 2024, which gave him until
14 February 18, 2025, to file a motion for substitution. He failed to do so, and instead filed a
15 motion to extend the deadline over a month later.

16 In his Motion to Substitute, Plaintiff asserts that the Court granted an extension to file
17 his Motion to Substitute by April 2, 2025. (Mot. Substitute 2:6–8). But the Magistrate Judge’s
18 Order merely denied the Motion to Substitute based on Plaintiff’s lack of points and authorities
19 per Local Rule 7-2(d). (Magistrate Judge Order 1:17–21). The Magistrate Judge did not
20 explicitly grant an extension beyond the 90 days required by the rule. (*See id.*). And even if she
21 had, Plaintiff’s Motion to Substitute contains no legal argument or citation as to whether this
22 Court may ignore the language of Rule 25(a) stating that “[i]f the motion is not made within 90
23 days after service of a statement noting the death, the action by or against the decedent *must* be
24 dismissed.” Fed. R. Civ. Pro. 25(a). Plaintiff’s Motion argues only that substitution is
25 warranted because the decedent’s claims are not extinguished. (Mot. Substitute 2:20–22).

1 Although that may be true, and it is the second requirement for substitution, Plaintiff fails to
2 demonstrate that his motion is timely. Accordingly, the Court DENIES Plaintiff's Motion to
3 Substitute Party and GRANTS the Motion to Dismiss.

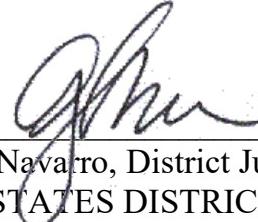
4 **IV. CONCLUSION**

5 **IT IS HEREBY ORDERED** that the Motion to Dismiss, (ECF No. 78), is **GRANTED**.

6 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Substitute Party, (ECF No.
7 89), is **DENIED**.

8 The Clerk of Court is kindly requested to close this case.

9 **DATED** this 22 day of April, 2025.



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11 Gloria M. Navarro, District Judge
12 UNITED STATES DISTRICT COURT
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